

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 462 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the Judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

YOGESHKUMAR HARSHADBHAI DAVE

Appearance:

Shri S.R. Divetia, Addl. Public Prosecutor, for
the Appellant-State

Shri P.M. Dave, Advocate, for the
Respondents-accused

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/01/97

ORAL JUDGEMENT

The order of discharge passed by the 2nd Joint Judicial Magistrate (First Class) at Anand on 7th October 1992 in Criminal Case No. 2202 of 1990 is under challenge in this appeal by leave of this Court under

sec. 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Magistrate has discharged the respondents-accused from the charge of the offences punishable under sec. 7 read with sec. 16 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The Food Inspector purchased a sample of 450 gms. of black pepper from respondent-accused No.1 from the shop belonging to respondent-accused No. 2 at about 11.30 a.m. on 4th October 1989 in the presence of one panch witness. He divided the sample into three parts and each part was separately packed and sealed and one part was sent to the Public Analyst at Vadodara for analysis and report and the two remaining parts were deposited with the local health authority. In his report, the Public Analyst opined the sample to be adulterated. Thereupon the Food Inspector filed his complaint in the court of the Judicial Magistrate (First Class) at Anand charging the respondents-accused with the offences punishable under sec. 16 read with sec. 7 of the Act. It came to be registered as Criminal Case No. 2202 of 1990. The respondents-accused were informed of institution of the prosecution. It appears that they thereupon requested the court to send one part of the sample to the Central Food Laboratory for its analysis and report. Apropos, one sample packet was sent to the Central Food Laboratory at Ghaziabad. Its report was received and taken on record at Ex. 7. On the basis of that report, on behalf of the respondents-accused an application was made on 23rd April 1992 for their discharge without framing any charge against them. It was taken on record as Ex. 42. After hearing the arguments, by his order passed below the application at Ex. 42 on 7th October 1992, the learned trial Magistrate discharged the respondents-accused from the offences punishable under sec. 16 read with sec. 7 of the Act. That aggrieved the State of Gujarat. It has therefore preferred this appeal by leave of this Court under sec. 378 of the Cr.P.C. for questioning its correctness.

3. Learned Advocate Shri Dave for the respondents-accused is right in his submission that no appeal lies against an order of discharge in view of the binding ruling of the Supreme Court in the case of Municipal Corporation of Delhi v. Girdharilal Sapuru and others reported in AIR 1981 SC 1169. At this stage learned Additional Public Prosecutor Shri Divetia for the appellant-State orally applies for conversion of this appeal into a revision application. Such oral prayer is

granted and this appeal is ordered to be converted into a revision application. Since learned Advocate Shri Dave appears for the respondents-accused in the appellate proceeding, rule to be issued on the revision application is deemed to have been issued and waived by learned Advocate Shri Dave for the respondents-accused.

4. The article of food involved in this proceeding was black pepper. It has been held to be an article of primary food by this Court in its ruling in the case of Kishorkumar Venilal Patel v. Dayaswarup Bhailalbhai Rao and another reported in 1991(1) 32(1) G.L.R. 380. It has been further held therein that, if any foreign substance is found in primary food, in order to brand it as adulterated, there should be an express opinion that the foreign material found therein was injurious to health. In absence of any such clear cut opinion by the Public Analyst or by the Central Food Laboratory, the article of primary food cannot be said to be adulterated.

5. As pointed out hereinabove, the certificate of the Central Food Laboratory is at Ex. 7 on the record of the case. It shows presence of light berries with 92% alcohol to the tune of 10.6%. The standard prescribed for black pepper is 10% as the maximum. It is thus clear that the presence of light berries in the article of primary food was marginally above the permissible limit. The Central Food Laboratory has however not opined that the article of food for consumption was injurious to health. In absence of any clear cut opinion in that regard, the article of food cannot be said to be adulterated in view of the aforesaid ruling of this Court.

6. Even otherwise, the excess of the foreign substance was found to be only marginal. It can be said to be negligible. In view of the aforesaid ruling of this Court, it has to be ignored and the article of food is not to be treated as adulterated.

7. It must be said to the credit of the learned trial Magistrate that he has followed the aforesaid binding ruling of this Court and has discharged the respondents-accused without framing any charge against them. The impugned order passed by the learned trial Magistrate is thus found to be quite in consonance with the aforesaid binding ruling of this Court and can be said perfectly legal and valid. It calls for no interference by this Court in revision.

8. In the result, this revision application fails.

It is hereby rejected. Rule is accordingly discharged.
